

**NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS**

California Rules of Court, rule 977(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 977(b). This opinion has not been certified for publication or ordered published for purposes of rule 977.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

MICHAEL ROSEN,

Plaintiff and Appellant,

v.

FRANKLIN MINT COMPANY,

Defendant and Respondent.

B166247

(Los Angeles County  
Super. Ct. No. BC234774)

APPEAL from a judgment of the Superior Court of Los Angeles  
County, Kenneth R. Freeman, Judge. Affirmed.

Bruce N. Graham for Plaintiff and Appellant.

Loeb & Loeb, Carla J. Feldman, David C. Nelson and Jonathan C.  
Balfus for Defendant and Respondent.

Plaintiff Michael Rosen appeals from a trial court order granting the motion to dismiss brought by defendant Franklin Mint Company (respondent) against Rosen on his complaint which names as defendants both respondent and Rosen's judgment debtor in a prior action, Maryse Nicole. Nicole sued respondent for breach of an agreement under which respondent was to make royalty payments to her. Rosen's complaint alleged that he was entitled to the payments due to Nicole as a result of an order in the prior action under which he was assigned the rights of Nicole to receive payments from respondent until the judgment was fully satisfied. Prior to the dismissal of the complaint, the trial court had granted respondent's summary judgment motion against Nicole's claim for royalty payment based on collateral estoppel applied from her bankruptcy proceeding. It follows that the trial court did not abuse its discretion in dismissing appellant's complaint seeking the same royalty payments Nicole sought. We affirm.

## **FACTS**

Maryse Nicole Knight and her husband, Joseph Knight, owned a sole proprietorship engaged in the design and manufacture of dolls and related products sold under the names "Maryse Nicole" and "Maryse Nicole Originals." In 1992, the Knights entered into a "Consulting and Royalty Agreement" in which they sold their business and their right, title and interest in the "Maryse Nicole" and "Maryse Nicole Originals" names to respondent. The agreement provided that Maryse Nicole was to receive royalty payments from respondent.

In February 1996, in a civil action numbered BC115200 and brought by Rosen against the Knights individually and doing business as Maryse Nicole Originals, a \$202,453 judgment was entered for Rosen and against the Knights. The judgment on a special verdict stated that the jury found that Rosen and the Knights entered into a finder's fee contract, and that the Knights breached the

contract. Later in the year, effective August 12, 1996, respondent terminated its agreement with Maryse Nicole.

Two days after the termination, on August 14, an assignment order was entered in the civil action numbered BC115200. The order stated that the Knights' rights to payment of royalties and royalties advances by respondent are assigned to Rosen "until such time as the judgment herein is fully satisfied." The order required respondent to pay royalties and royalty advances to Rosen's counsel until the judgment in Case No. BC115200 "is fully satisfied."

In June 1998, Maryse Nicole petitioned for Chapter 7 bankruptcy. She filed a document titled "DEBTOR'S DECLARATION RE: ASSETS AND PROPERTY INTERESTS" in the bankruptcy court. In it, she declared that her royalty agreement with respondent had been terminated in 1996, and that respondent was no longer obligated to pay her further royalties. Rosen appeared in the bankruptcy action and filed an objection to the discharge of Nicole's debt to him. He actively challenged her contention that respondent owed her no further royalty payment.

In March 2000, the bankruptcy court entered a memorandum of decision denying Rosen's objection to discharge of the debt. The court ruled that Rosen "asserted, but did not prove, that Nicole should have had income from the Franklin Mint contract and did not explain the loss of that income or assets purchased with income. The evidence was undisputed that the Franklin Mint contract was terminated in August, 1996 and that no further income under that contract was owed to Nicole. . . . [Rosen] did not prove that defendant [Nicole] had any proceeds from the Franklin Mint contract which should have been available for payment to her creditors in her June, 1998 bankruptcy."

In August 2000, Nicole filed a complaint for breach of contract against respondent. She asserted that respondent failed to pay her royalties, in

breach of their 1992 agreement. In December 2001, respondent moved for summary judgment, arguing that Nicole's claim was barred by the doctrine of collateral estoppel based on the bankruptcy court ruling that respondent owed no further royalties to Nicole. In March 2002 Rosen successfully moved for leave to file a complaint in Nicole's action. The complaint sought declaratory relief adjudicating that respondent continued to be obligated to pay monetary damages to Rosen up to the amount of the unsatisfied judgment. In late March 2002, the superior court granted respondent's summary judgment motion against Nicole. The court concluded that the issue "presented and necessarily decided in the bankruptcy proceeding is the same issue presented in this lawsuit" and that the action was barred.

In January 2003, respondent moved to dismiss Rosen's complaint pursuant to Code of Civil Procedure section 583.150. Rosen filed a notice of non-opposition to the motion. The trial court granted the motion, and entered an order dismissing Rosen's complaint with prejudice.

## **DISCUSSION**

Code of Civil Procedure section 583.150 provides in part: "This chapter does not limit or affect the authority of a court to dismiss an action . . . under the inherent authority of the court." Accordingly, we review the trial court's dismissal for abuse of discretion. Under this deferential standard of review, we do not disturb the trial court's decision absent a clear abuse of discretion and miscarriage of justice. (*Blank v. Kirwan* (1985) 39 Cal.3d 311, 331.)

"In general, collateral estoppel precludes a party from relitigating issues litigated and decided in a prior proceeding. [Citations.] 'Traditionally, we have applied the doctrine only if several threshold requirements are fulfilled. First, the issue sought to be precluded from relitigation must be identical to that decided

in a former proceeding. Second, this issue must have been actually litigated in the former proceeding. Third, it must have been necessarily decided in the former proceeding. Fourth, the decision in the former proceeding must be final and on the merits. Finally, the party against whom preclusion is sought must be the same as, or in privity with, the party to the former proceeding.’ [Citation.]” (*Gikas v. Zolin* (1993) 6 Cal.4th 841, 848-849.)

As respondent notes, all the elements of collateral estoppel are met here. The issue of whether Nicole was entitled to royalty payments from respondent is the same issue litigated and ruled upon by the bankruptcy court. Collateral estoppel therefore barred Nicole from relitigating in the issue of whether Nicole was owed anything by respondent under their 1992 agreement. Rosen was an active party to the bankruptcy proceeding. As Nicole’s assignee, Rosen stood in Nicole’s shoes as assignor. (*Professional Collection Consultants v. Hanada* (1997) 53 Cal.App.4th 1016, 1018-1019.) Therefore, he too was collaterally estopped from raising the already litigated and decided issue of whether respondent was obligated to make royalty payments on the agreement. The trial court did not abuse its discretion in dismissing Rosen’s complaint.

### **DISPOSITION**

The judgment is affirmed. Costs on appeal are awarded to respondent.

NOT TO BE PUBLISHED

HASTINGS, J.

We concur:

EPSTEIN, Acting P.J.

CURRY, J.

